



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(C-834-810)

Titanium Sponge from Kazakhstan: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Applicable. September 13, 2017.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian at (202) 482-6412 or Ariela Garvett at (202) 482-3609, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petition

On August 24, 2017, the U.S. Department of Commerce (the Department) received a countervailing duty (CVD) Petition concerning imports of titanium sponge from Kazakhstan, filed in proper form on behalf of Titanium Metals Corporation (the petitioner). The CVD Petition was accompanied by antidumping duty (AD) petitions concerning imports of titanium sponge from Japan and Kazakhstan.¹ The petitioner is a domestic producer of titanium sponge.²

¹ See Letter to the Secretary of Commerce from the petitioner re: “Titanium Sponge from Japan and Kazakhstan: Petition for the Imposition of Antidumping and Countervailing Duties” (August 24, 2017) (the Petition).

² *Id.*, Volume I of the Petition, at 1.

On August 30, 2017, the Department requested supplemental information pertaining to certain areas of the Petition.³ The petitioner filed responses to these requests on September 1, 2017.⁴ The petitioner filed revised scope language on September 11, 2017.⁵

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Kazakhstan (GOK) is providing countervailable subsidies, within the meaning of section 771(5) of the Act, to imports of titanium sponge from Kazakhstan, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing titanium sponge in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.⁶

³ See Letter from the Department, “Petition for the Imposition of Countervailing and Antidumping Duties on Imports of Titanium Sponge from Japan and Kazakhstan: Supplemental Questions,” dated August 30, 2017 (Kazakhstan CVD Supplemental Questionnaire).

⁴ See Letter to the Secretary of Commerce from the petitioner, re: “Petition for the Imposition of Countervailing Duties on Titanium Sponge from Kazakhstan: TIMET Response to Supplemental Questionnaire,” (September 1, 2017) (Kazakhstan CVD Supplement).

⁵ See Letter from the Department, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Titanium Sponge from Japan and Kazakhstan: Supplemental Questions,” dated September 8, 2017 (Second General Issues Supplemental Questionnaire).

⁶ See “Determination of Industry Support for the Petition” section, below.

Period of Investigation

Because the Petition was filed on August 24, 2017, the period of investigation (POI) is January 1, 2016, through December 31, 2016.⁷

Scope of the Investigation

The product covered by this investigation is titanium sponge from Kazakhstan. For a full description of the scope of this investigation, *see* the “Scope of the Investigation,” in the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the product for which the domestic industry is seeking relief.⁸

As discussed in the preamble to the Department’s regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁹ The Department will consider all comments received from interested parties and, if necessary, will consult with the interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,¹⁰ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, October 3, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal

⁷ See 19 CFR 351.204(b)(2).

⁸ See Second General Issues Supplemental Questionnaire; *see also* Second General Issues Supplement, at Attachment D.

⁹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹⁰ See 19 CFR 351.102(b)(21).

comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, October 13, 2017, which is 10 calendar days from the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹¹ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, the Department notified representatives of the GOK of the receipt of the Petition, and provided them the opportunity for

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

consultations with respect to the CVD Petition.¹² Consultations with Kazakhstan were held *via* conference call on September 7, 2017.¹³

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC

¹² See Letter to the Embassy of Kazakhstan, “Countervailing Duty Petition on Titanium Sponge from Kazakhstan: Invitation for Consultations to Discuss the Countervailing Duty Petition” (August 28, 2017).

¹³ See Memorandum, re: “Consultations with Officials from the Government of Kazakhstan (GOK) Regarding the Countervailing Duty (CVD) Petition on Titanium Sponge from Kazakhstan” (September 7, 2017).

must apply the same statutory definition regarding the domestic like product,¹⁴ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁵

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in a petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that titanium sponge, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁶

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. The petitioner provided its own 2016 production of the domestic like product, and compared this to

¹⁴ See section 771(10) of the Act.

¹⁵ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁶ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Titanium Sponge from Kazakhstan (Kazakhstan CVD Initiation Checklist), at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Titanium Sponge from Japan and Kazakhstan.” The checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

the estimated total production of the domestic like product for the entire domestic industry.¹⁷ We relied on data the petitioner provided for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that the petitioner has established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and that the

¹⁷ See Volume I of the Petition, at 6-7 and Exhibit GEN-20.

¹⁸ *Id.* For further discussion, see Kazakhstan CVD Initiation Checklist, at Attachment II.

¹⁹ See Kazakhstan CVD Initiation Checklist, at Attachment II.

²⁰ See section 702(c)(4)(D) of the Act; see also Kazakhstan CVD Initiation Checklist, at Attachment II.

²¹ See Kazakhstan CVD Initiation Checklist, at Attachment II.

²² *Id.*

petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate.²³

Injury Test

Because Kazakhstan is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Kazakhstan materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioner contends that the industry’s injured condition is illustrated by reduced market share; displacement of U.S. production by subject imports; underselling and price suppression or depression; decline in production, capacity utilization, hours worked, and earnings before interest and taxes; lost sales and revenues; and decline in pricing for downstream titanium products.²⁵ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for

²³ *Id.*

²⁴ See Volume I of the Petition, at 24-25 and Exhibits GEN-5 and GEN-6.

²⁵ See Volume I of the Petition, at 1-3, 14-15, 18-47 and Exhibits GEN-1, GEN-2, GEN-5, GEN-6, GEN-10, GEN-12 – GEN-15, GEN-19 – GEN-26, GEN-30, GEN-31, and GEN-33.

initiation.²⁶

Initiation of CVD Investigation

Based on the examination of the CVD Petition, we find that the Petition meets the requirements of section 702 of the Act. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on three of the four alleged programs in Kazakhstan. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the Kazakhstan CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Therefore, we are initiating a CVD investigation to determine whether imports of titanium sponge from Kazakhstan benefit from countervailable subsidies conferred by the Government of Kazakhstan. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.²⁷ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.²⁸ The amendments to sections 776 and 782 of the Act are applicable to all determinations

²⁶ *See* Kazakhstan CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Titanium Sponge from Japan and Kazakhstan.

²⁷ *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

²⁸ *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

made on or after August 6, 2015, and, therefore, apply to this CVD investigation.²⁹

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

Based on information from independent sources, the petitioner named one company as a producer/exporter of titanium sponge in Kazakhstan.³⁰ Although the Department normally relies on the number of producers/exporters identified in the petition and/or import data from U.S. Customs and Border Protection (CBP) to determine whether to select a limited number of producers/exporters for individual examination in a CVD investigation, the petitioner identified only one company as a producer/exporter of titanium sponge in Kazakhstan: Ust-Kamenogorsk Titanium Magnesium Plant JSC (UKTMP). We currently know of no additional producers/exporters of merchandise under consideration from Kazakhstan and the petitioner provided information from independent sources as support.³¹ Accordingly, the Department intends to examine the sole producer/exporter in this investigation for Kazakhstan (*i.e.*, the company cited above). Parties wishing to comment on respondent selection for Kazakhstan must do so within five days of the publication of this notice in the *Federal Register*. Any such comments must be submitted no later than 5:00 p.m. ET on the due date, and must be filed electronically via ACCESS.

²⁹ See *Applicability Notice*, 80 FR, at 46794-95.

³⁰ See Petition, Volume I at 13; *see also* Kazakhstan CVD Supplement, at 1.

³¹ See Petition, Volume I.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOK *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of titanium sponge from Kazakhstan are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination will result in the investigation being terminated.³³ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information

³² See section 703(a)(2) of the Act.

³³ See section 703(a)(1) of the Act.

³⁴ See 19 CFR 351.301(b).

is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

³⁵ See 19 CFR 351.301(b)(2).

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁶ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁷ The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Dated: September 13, 2017

³⁶ See section 782(b) of the Act.

³⁷ See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Final Rule). Answers to frequently asked questions regarding the Final Rule are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix

Scope of the Investigation

The product covered by this investigation is all forms and grades of titanium sponge, except as specified below. Titanium sponge is unwrought titanium metal that has not been melted. Expressly excluded from the scope of this investigation are:

- 1) Loose particles of unwrought titanium metal having a particle size of less than 20 mesh (0.84mm);
- 2) alloyed or unalloyed briquettes of unwrought titanium metal that contain more than 0.2% oxygen on a dry weight basis; and
- 3) ultra-high purity titanium sponge. In ultra-high purity titanium sponge, metallic impurities do not exceed any of these amounts:

WT %

Aluminum 0.0005

Chromium 0.0001

Cobalt 0.0001

Copper 0.0002

Iron 0.0300

Manganese 0.0010

Nickel 0.0002

Vanadium 0.0002

Zirconium 0.0005

Carbon 0.0150

Hydrogen 0.0100

Nitrogen 0.0020

Oxygen 0.1000

Titanium sponge is currently classified under subheading 8108.20.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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